

STATUS OF THE HIGHWAY TRUST FUND: HOW THE FISCAL YEAR 2007 BUDGET IMPACTS SAFETEA LU

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OF THE
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INFRASTRUCTURE
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STATUS OF THE HIGHWAY TRUST FUND: HOW THE FISCAL YEAR 2007 BUDGET IMPACTS SAFETEA-LU

Wednesday, February 15, 2006

HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, SUBCOMMITTEE ON HIGHWAYS, TRANSIT AND PIPELINES, WASHINGTON, D.C.

The committee met, pursuant to call, at 2:00 p.m. in room 2167, Rayburn House Office Building, Hon. Thomas E. Petri [chairman of the committee] presiding.

Mr. PETRI. Good afternoon. The Subcommittee hearing will come to order. I would like to welcome our witness to today's hearing on the status of the Highway Trust Fund: How the Budget Year 2007 Proposals Impact SAFETEA-LU.

The original purpose of the hearing was to provide members of the Subcommittee and others with information on the Highway Trust Fund revenue estimates released last week in the President's 2007 budget and to hear testimony about how the President's budget will affect the implementation of SAFETEA-LU.

However, our invited witness for the Department of Treasury, Mr. Carroll, is unable to attend today's hearing. He is overwhelmed with testimony before two other committees on another subject and will have to be scheduled for a later date. We had invited him to talk about the drastic differences in the revenue estimates between 2005 and today.

The House and Senate conferees use the revenue estimates in the President's 2006 mid-session review, which were released last July, as the baseline from developing the final SAFETEA-LU conference report. However, when the President's budget was released on February 6th, it contained a nearly \$1.5 billion shift in the revenue estimates for budget year 2005 and a half million shift in estimates for 2006.

These drastic changes over just seven months bring into question the reliability of the estimating process of the Department of the Treasury. It is unfortunate Mr. Carroll is unable to be with us today, but as I indicated, we still intend to have him testify to explain the factors that influence the fluctuations and the revenue estimates between the mid-session review and the President's budget.

We are fortunate, as it turns out, doubly fortunate, to have Ms. Phyllis Scheinberg, DOT's Assistant Secretary for Budget and Programs, with us today. Ms. Scheinberg was kind enough to come up and to brief Mr. DeFazio and myself and staff on the Subcommittee this past fall on the status of the Highway Trust Fund and how

possible changes in the Trust Fund may impact SAFETEA-LU. That meeting served as the basis for a series of conversations that have led to this hearing.

The President's budget shows a negative balance, a negative balance of \$2.3 billion in the highway account of the highway trust fund at the end of budget year 2009. The Department of Transportation has said in the past they will not allow the highway account to run a negative balance.

When Congress passed SAFETEA-LU last summer, it was done with the expectation that the guaranteed funding levels prescribed in that bill would be honored for budget year 2005 through budget year 2009. We have invited Ms. Scheinberg here today to address how the Department anticipates dealing with this projected negative balance; specifically whether or not they will cut spending authorized in SAFETEA-LU, and if so, how such cuts will be applied and when they might occur.

We have also asked Ms. Scheinberg to talk about the instances where the President's budget differs from SAFETEA-LU. We are very pleased that the budget closely mirrors the authorizing statute we passed last July. However, we would like to hear why the Administration has decided to deviate from SAFETEA-LU in the following areas.

First, funding an unauthorized Open Roads financing pilot program at the expense of State highway formula programs. Second, funding National Highway Traffic Safety Administration's vehicle safety activities, which are traditionally funded from the general fund, from the Highway Trust Fund in a time when the Highway Trust Fund may not be able to support its traditional activities. Thirdly, providing \$100 million less than the authorized funding level for the Federal Transit Administration's Small Starts program.

We look forward to hearing your testimony on these issues and I suspect members may have several questions.

I now yield to Mr. DeFazio for his opening statement.

Mr. DEFazio. Thank you, Mr. Chairman. It is unfortunate that someone from Treasury can't be here to address how there could have been such an extraordinary change in revenue estimates over such a short period of time. And I would hope that we can perhaps schedule a future meeting where we do have someone from Treasury. I understand that the DOT folks can talk about how they might implement changes in the program if such projections come true, but they can't shed any light on how those projections were reached. I understand that fact.

I am also concerned that the Administration, and I will be asking about this, has proposed to fund the entire National Highway Transportation Safety Administration budget out of the Highway Trust Fund, when traditionally some of those functions have been paid for out of general revenues, particularly if we are looking at this problem of a few years down the road in the Trust Fund. It seems that we wouldn't want to be adding new burdens at a time when we are looking at a potential, possible, predicted shortfall.

So with that, Mr. Chairman, I look forward to the testimony.

Mr. PETRI. Thank you. Any other members with any opening statements? Mr. Duncan.

Mr. DUNCAN. All I want to say, I will be very brief, Mr. Chairman, but I think it is certainly good that you are looking into this. We need to find out not only about this negative \$2.3 billion figure that you mentioned, but we need to, I think we should find out why this has occurred or come up so soon after the passage of the Highway Bill and find out, is it expected to continue and at how fast a rate, and is it going to get even bigger or is this some sort of aberration or what.

So I am glad that you are doing this. I thank you very much for calling this hearing and allowing us to participate.

Mr. PETRI. Any other opening statements? Mr. Pascrell.

Mr. PASCRELL. Chairman Petri and Ranking Member DeFazio, I want to thank you for holding this Highway Trust Fund hearing.

When we passed SAFETEA-LU last summer, it was done with the expectation that the guaranteed funding levels prescribed in the bill would be honored from 2005 to 2009 fiscal year. This budget does not live up to this expectation. The budget does show a negative balance, as the Chairman pointed out, of \$2.3 billion in the highway account.

Aside from the fact that the Highway Trust Fund will be in deficit, this is disturbing for other reasons. How did the Administration come to this conclusion? I would like to know how they arrived at it. They must have seen something conveniently after the fact and maybe you know and we will get to the questions hopefully in a little while.

The Department of Transportation has said they will not allow the highway account of the Highway Trust Fund to run a negative balance. I am anxious to know how they anticipate dealing with this projected negative balance while living up to their statutory obligations. Seemingly in contrast with the recent deficit projections, the Administration's budget also includes new, higher revenue estimates for the highway account of the same trust fund.

And I find it puzzling, and I hope most of us here find it puzzling, that the Fund will receive more funding but end up with less. I know weird things happen in this town, but I am anxious to see how that happened.

Finally, I am extremely disappointed that at a time when funds are scarce, and our Nation's highways are crumbling and congested beyond a projected level of capacity, the President's budget takes money from the State highway formula of dollars and other highway programs. Highway transportation is a vital part of our Nation's economy. To underfund at this critical juncture in contrast to Congressional intent, and here is the problem.

There are committed capital projects in the budget, Mr. Chairman. They are committed. And you know in other parts of the transportation budget, what we have problems with right now, that many of those capital projects, many of them water projects, many of them having to do with damming, many of them having to do with water quality, those projects stop if the money is not there to continue those projects. Yet the people in those areas expect those projects to be committed. In fact, certain parts, agencies within the Department of Transportation have committed to the public in different parts of the Country that these projects would be completed.

I know my district is just one. It only has to do with a dam which could flood out hundreds of thousands of people. That is pretty important, regardless of where you live, just as it is important to everybody here. None of us are from Mississippi, we are concerned about what is going on in the Gulf. That is not our district. But that would be very selfish of us to say we have no responsibility.

So I would like to hear some answers, and I have thrown out some questions. Does this have anything to do, also, with transfer of dollars? And second of all, does this have anything to do with the negotiations that occurred at the very end, when we were looking for a bottom line in SAFETEA-LU? Remember what went back and forth between the Senate and the House and the White House? And the beat goes on.

So I would like to hear your answers to that question. Thank you.

Mr. PETRI. Thank you. Mr. Coble.

Mr. COBLE. Mr. Chairman, my colleagues have thanked you for conducting this hearing, and I did not want my silence to convey to you that I did not thank you for doing it. So I want to be heard on that.

I want to just say this, Mr. Chairman. I appreciate what the gentlemen from New Jersey and Tennessee said. I know of no issue that is more compelling to us than highway infrastructure. It deteriorates daily, bridges, unsafe bridges. And I think it is a direct link to safety.

So I think this is an important hearing, Mr. Chairman, I thank you for having it. I am going to have to depart for another hearing fairly imminently, but again, thank you, sir.

Mr. PETRI. You are welcome. Mr. Mica.

Mr. MICA. Thank you. I will be very brief. I thank you for conducting this hearing, which we must do to review some of these budget proposals. It appears the Administration is in pretty good compliance as far as authorization under SAFETEA-LU. There are a couple of questions that will be raised there.

I think what is most startling about the information that has been provided for the Subcommittee is the projections, looking out beyond this budget year. They foretell some very serious problems in funding our Nation's highway and transportation infrastructure, the negative cash balances in the highway account, in particular, should alarm everyone. It does point out that we have the challenge of finding a better mechanism, both to finance the system and then also to maintain the integrity and stability of available funds.

And then as Mr. Coble said, we have tremendous needs in every district, every State across the Nation for highway infrastructure. So this hearing does highlight some of the challenges we face. I yield back.

Mr. PETRI. Thank you.

Are there any other opening statements? If not, Ms. Scheinberg.

TESTIMONY OF PHYLLIS F. SCHEINBERG, ASSISTANT SECRETARY FOR BUDGET AND PROGRAMS AND CHIEF FINANCIAL OFFICER, UNITED STATES DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY J. RICHARD CAPKA, ACTING ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION

Ms. SCHEINBERG. Good morning, Mr. Chairman. I want to thank you for the opportunity to appear before you today to discuss the President's fiscal year 2007 budget plan for the Department of Transportation's surface transportation programs. I am happy to have with me today my colleague, Rick Capka, the Acting Administrator of the Federal Highway Administration.

Last summer, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, also known as SAFETEA-LU, authorized funding for the Federal Highway Administration, the Federal Transit Administration, the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration through fiscal year 2009. I am very pleased to report to you today that the President's fiscal year 2007 budget generally proposes surface transportation funding as envisioned in SAFETEA-LU.

The President's request for highways, transit and highway safety is \$50 billion. That is \$3.9 billion more than enacted in fiscal year 2006. The President's request includes \$842 million associated with a revenue aligned budget authority, or RABA, adjustment. This RABA calculation, as provided in SAFETEA-LU, adjusts highway funding up or down depending on gas tax receipts and ensures that revenues collected into the Highway Trust Fund are directed to fund surface transportation program needs.

The President's 2007 request, including the RABA adjustment, will provide historically high levels of investment in our highway, transit and highway safety programs. The Administration's 2007 proposed funding levels for these transportation programs are especially significant, given the overall context of the President's budget.

At a time when most non-security related domestic programs are experiencing reductions in their funding levels, and when the Department of Transportation's total budget level is holding steady, the President's 2007 budget request would increase highway, transit and highway safety funding by nearly 10 percent above last year's levels. Actually it is this year's levels. This shows the high priority the Administration has placed on continuing to fully fund SAFETEA-LU programs among many competing national priorities.

At the same time, the President's 2007 budget projections reflect a continuing downward trend in the cash balances in the Highway Trust Fund. I call your attention to the fact sheet that is attached to my statement, which will be helpful in reviewing the current status of the Highway Trust Fund. The Trust Fund has two parts: a highway account, which funds Federal highways, NHTSA, and motor carrier programs; and a separate mass transit account that funds Federal transit programs. By the end of the authorization period in 2009, the Trust Fund balances are estimated to be a negative \$2.3 billion in the highway account and a positive \$6.9 billion in the mass transit account.

A review of the history of the Highway Trust Fund shows that projections of the cash balances in this fund typically vary from year to year, and become less reliable as you look further into the future. The Department of Treasury model used to calculate the Highway Trust Fund resources is dependent on macroeconomic projections that are subject to a large number of variables.

In addition, expenditures from the Highway Trust Fund are estimates and based largely on approximations of each State's obligations for highway projects and programs. Thus, factors affecting the cash balances can be difficult to predict.

One way to identify new ways of expanding highway investment levels is through the proposed \$100 million Open Roads Financing pilot program. This new program would make it possible for up to five States to explore innovative mechanisms that can augment existing sources of State highway funding, as well as improve highway performance and reduce congestion. The pilot States will report their progress and provide lessons learned that would be helpful as we explore new ways to support surface transportation in the future.

In addition, SAFETEA-LU establishes two commissions charged with reviewing and making recommendations on issues affecting the Highway Trust Fund. These two commissions will provide information on potential alternatives to the current gasoline tax approach that may prove more effective in supporting highway and transit funding.

In summation, the President's budget for 2007 proposes surface transportation funding generally consistent with SAFETEA-LU guaranteed levels. At the same time, the Administration's revenue and spending projections for future years indicate a shortfall in resources. We want to work closely with the Congress to find solutions for this projected imbalance. We must begin serious consideration of the post-SAFETEA-LU era to ensure that these programs are fully financed to meet our Nation's transportation needs.

Thank you for the opportunity to appear before you. Rick and I would be happy to answer any questions you may have.

Mr. PETRI. Thank you. I wonder if you could spend a little time exploring with us the practical impacts of the projected \$2.3 billion shortfall. In particular, how would you propose to handle that? Do you have history to look back to or is this new territory? Would you be doing an across the board cut or cutting back on certain programs? How would you, when would you have to start making adjustments in order to preserve as much integrity of the program as possible, given the time lags and all that?

Ms. SCHEINBERG. Mr. Chairman, we are optimistic that we will not have to get to the point where we will have to make cuts in the program. We are optimistic that the receipts coming into the Highway Trust Fund will cover the funding levels through SAFETEA-LU. This \$2.3 billion shortfall in 2009 is relatively small and it is at the end of the authorization period, by which time we expect that the receipts will increase and be able to cover the authorization levels.

If it were to come to pass that we would have to deal with this, we would come to you and to the Congress and discuss this issue. We are optimistic at this point that we will not have to do that,

but if there were some problem, we would definitely talk to you before we would make any plans.

Mr. PETRI. I also wonder if you could comment a little bit more on the President's program you referred to in your testimony about the Open Roads Financing pilot program that will be available for up to five States. How does that differ from what is already authorized in SAFETEA-LU in this area?

Ms. SCHEINBERG. I believe you are referring to our Open Roads Pilot test program.

Mr. PETRI. Yes.

Ms. SCHEINBERG. With this pilot, we are looking for new mechanisms of expanding the revenues that we do have, and expanding the way we fund surface transportation programs. This pilot is more closely aligned to value pricing programs than it is to a capital program. We are looking for innovative ideas from States, from metropolitan areas, and from corridors who might have some broader way of using alternative financing to expand the use of their State monies. We are looking for creative uses of transportation funding, so that we can apply the lessons learned from these pilots to remove the barriers to doing different things in the next reauthorization.

We are looking for ways to finance the highway and surface transportation programs differently in the next reauthorization period. I truly believe that what we all need to focus on is how to deal with the next reauthorization. We believe that there is enough financing in the Highway Trust Fund to cover SAFETEA-LU. But there will not be enough financing after SAFETEA-LU. And that is where we need to focus.

Mr. PETRI. So there are a number of different innovations that are going on around the world, in Singapore, in Britain, I think a lot of us are familiar with what is happening in downtown London, where you have to pay to drive downtown. I think Manhattan is thinking of doing the same thing, and in Holland and in Germany. Are those the kinds of things that you are asking that States look at? Or are you asking that they do something that has not been done anywhere before?

Ms. SCHEINBERG. Something like that might be some of the ideas. We are trying to do it in this Country in a way that makes sense for us. We are looking for ideas at the State level—and various States and metropolitan areas have ideas. We have been talking to them and we want to make it. We want to give them an opportunity to demonstrate their ideas of how to relieve congestion and expand financing in their areas.

Mr. PETRI. Thank you.

Mr. DeFazio.

Mr. DEFAZIO. Thanks, Mr. Chairman. I guess since again Treasury is not here, we can't talk about the projections. But you are saying you feel funding will be adequate, which must mean that you feel that perhaps these projections are going to be disproved by experience in the interim?

Ms. SCHEINBERG. We have found through experience that the further you go out into the future, the less reliable the Treasury projections are. Evidence of the fact that they are less reliable is the fact that we have a positive Revenue Aligned Budget Authority

(RABA) calculation for this year. That tells us that the estimates we had a year ago have been exceeded by the actual receipts coming into the Highway Trust Fund.

Mr. DEFAZIO. Does RABA make—I'm sorry, go ahead. Finish your answer.

Ms. SCHEINBERG. I just wanted to say, that just shows the uncertainty of these projections. You could go out even further, say three years into the future and have sufficient funds. We think that given the positive RABA the estimates are going in the right direction. The actuals are going up as compared to the projections. By three years, we will have enough to get through the authorization period.

The other issue is that Congressional Budget Office's (CBO) estimates for the Highway Trust Fund are even higher than the Administration's estimates. Traditionally, CBO and the Administration have had some differences in their estimates. CBO is more optimistic that we will have enough money. Their estimates show that we will make it through the authorization period without a problem.

Mr. DEFAZIO. With RABA adjustments in the interim?

Ms. SCHEINBERG. Yes. We would do RABA year by year.

Mr. DEFAZIO. Right. But they are projecting that out into the future, too.

Given this projection for 2009, let's say a year from today they are still projecting that kind of a shortage. At what point would DOT feel that it needed to come to the Congress and begin to seriously discuss outlay adjustments in the future, I mean, if it was projected for next year, two years from now?

Ms. SCHEINBERG. Well, if a year from now, we are having this same meeting, we will be discussing the 2008 budget. We would definitely need to look at what is being projected for the remainder of SAFETEA-LU at that point. Whether we will need to adjust spending will depend on the magnitude of the estimates at that time.

Mr. DEFAZIO. Should the policy, should we be looking at, I know we want to maximize our investment as we go. We have tremendous unmet needs across the Country.

But on the other and, would it be prudent for Congress to be looking at some sort of minor adjustment to RABA, establishing some more capability of carry-forward for the trust fund?

Ms. SCHEINBERG. Mr. DeFazio, I think the expression of the Administration's support for SAFETEA-LU is such that we agree with this Committee, and with the Congress as a whole, that fully funding for SAFETEA-LU is the right thing to do. We want to give it a chance. It is not time yet to give up on the calculations that are in the legislation.

Mr. DEFAZIO. Right, but last year we didn't anticipate this additional funding and the RABA upward adjustment this year.

Ms. SCHEINBERG. Well, except that the law provided for it.

Mr. DEFAZIO. We allowed yes, but we didn't estimate it.

Ms. SCHEINBERG. Well, this is related to the volatility of these projections. We provide for RABA because we expect that there will be changes in the estimates. I think we saw through TEA-21 that almost every year there was a RABA adjustment. So we have a his-

tory that the funding is adjusted as we compare, the actuals to the estimates. I think we need to let this process work and see how it goes before we make any adjustments to the authorization language.

Mr. DEFAZIO. I think you were discussing with the Chairman the Open Roads financing pilot program, or at least alluding to it in terms of allowing States or local jurisdictions to innovate in terms of looking at different ways of assessing costs of the system to users.

Ms. SCHEINBERG. Yes.

Mr. DEFAZIO. And I am just curious whether you are familiar with what my State is proposing and whether you think that is consistent with what you are looking at here.

Ms. SCHEINBERG. I am going to ask Rick to respond.

Mr. DEFAZIO. Sure.

Mr. CAPKA. Mr. DeFazio, the pilot that you have going on in Oregon is a great example of what we are trying to encourage with the Open Roads pilot program. We are trying to stimulate great ideas to allow us to look at mechanisms and opportunities to shift away from the traditional methods of collecting the revenues.

So the program that you have in Oregon is a good example. And we know there are other good examples out there as well, and we need to be doing something now so that we can inform the decision makers a few years down the road on which way we need to be heading in the period after SAFETEA-LU.

Mr. DEFAZIO. Thank you. Thank you, Mr. Chairman.

Mr. PETRI. Mr. Duncan, any questions?

Mr. DUNCAN. Thank you very much, Mr. Chairman.

Ms. Scheinberg, this is my 18th year on this Committee, and I have been through several highway bills. Over that time, I have seen all sorts of figures about the increases in vehicle miles traveled. I saw figures for the 1980s, the 1990s and so forth. Over a 10 year period, vehicle miles traveled have been going up, in some States three times, in some States four or five times.

I have mentioned before than when I was growing up, most families had one car, some families had two. But now the mother, the dad, both the teenagers, many families have four or five vehicles now. These cars and the number of vehicles and the vehicle miles traveled just seem to keep on going, just almost exploding.

In your projections and your discussions at the Department of Transportation, do you see that continuing, or do you think that is going to slow down or taper off? What can you tell us about that, if anything?

Ms. SCHEINBERG. We see the same trends that you are seeing. The numbers validate the trends. We see this trend continuing, for the near future at least, although at some point there probably will be a leveling off. But at this point the trend of increased vehicle miles traveled is continuing.

Mr. DUNCAN. At least in the foreseeable future, it keeps going way up.

Ms. SCHEINBERG. Yes.

Mr. DUNCAN. I assume, too, that highway construction costs keep just ballooning or going way up. Is that what you also see?

Ms. SCHEINBERG. Yes.

Mr. DUNCAN. So these needs, thinking of that, this \$2.3 billion, we have a report here that says these drastic changes between estimates over just seven months bring into question the reliability of the estimating process at the Department of Treasury. What I am wondering about, you say that you think there is enough money there over the next three years. But do you feel pretty certain about that, with all these figures continuing to go way up, and the needs continuing to grow?

Then when you talk about needing to do something for the future, do you think these figures are just going to go really explode in five or ten years down the road?

Ms. SCHEINBERG. Mr. Duncan, I think there are a couple of things going on here. One is exactly what you are talking about, that there is, the needs are growing. The other thing that is happening is that the Highway Trust Fund is not growing as fast as the needs.

Mr. DUNCAN. Right. That is what I was going to get at next.

Ms. SCHEINBERG. The Highway Trust Fund is growing, but it is not meeting the expanding needs, and it is not expanding as quickly as the needs are. So that is where the shortfall is coming from. It is not from the fact that we are not generating gasoline revenues. It is the fact that the needs are growing faster.

Mr. DUNCAN. Right.

Ms. SCHEINBERG. We believe that now is the time to consider other forms of financing highway programs. That is one of the reasons we have proposed the Open Roads program. It is also one of the reasons that you included in SAFETEA-LU two commissions to look at other ways of financing the post SAFETEA-LU era. We need to find more money for highway programs because the needs are growing exponentially.

Mr. DUNCAN. Well, when you say that the CBO is even more optimistic than the Treasury Department or the Administration, are you, is your Department having discussions with the Treasury Department and the CBO about this at this time?

Ms. SCHEINBERG. Traditionally there have been differences. This is not a new phenomenon. CBO has traditionally had higher receipt levels, and higher estimated levels than Treasury. The actuals usually come out somewhere in between. That says to me is that this estimation process is not a science. It is dependent on the economy. It is dependent on some larger issues that are very hard to predict. I think this Committee and the Congress in general has recognized that is why we have RABA in SAFETEA-LU.

Mr. DUNCAN. Well, we are going to need to get, the Chairman mentioned some innovative ideas or things that they are doing in other countries. We are going to have to get these commissions that you mentioned and the top talents at the Department of Transportation to come up with some pretty good recommendations for us to take a look at, I think. It looks like to me like you are talking about a problem that is going to grow pretty big, just a few short years down the road.

Thank you very much, Mr. Chairman.

Mr. PETRI. Thank you.

Mr. Pascrell?

Mr. PASCRELL. I am looking at the fact sheet that you supplied to us. The bottom of that fact sheet is a cash balance during the program up to 2009, including 2009. Is that correct?

Ms. SCHEINBERG. Yes.

Mr. PASCRELL. You show that beginning in 2004, there is a continual decline in the balances within the highway account.

Ms. SCHEINBERG. Yes.

Mr. PASCRELL. That didn't just happen yesterday, it didn't happen seven months ago. This happened beginning in 2004. I will get back to that in a second.

Ms. SCHEINBERG. Yes, sir.

Mr. PASCRELL. Then you show that in the mass transit account, except for 2005, there has been a steady increase, maybe not to the greatest proportion in 2009, projected for the mass transit account, correct?

Ms. SCHEINBERG. Yes, I can explain that if you would like.

Mr. PASCRELL. Okay. That was not my question, but go ahead.

Ms. SCHEINBERG. SAFETEA-LU changed the method for accounting for the mass transit outlays. The change more accurately reflects program outcomes when compared to the way it was calculated before. Because of the technical adjustment that was made in SAFETEA-LU, the 2006 number is a big jump over 2005. The mass transit account holds its own through 2008 and then it starts following the direction of the highway account.

Mr. PASCRELL. And you have already said we can't trust those numbers.

Ms. SCHEINBERG. The trend would be that the mass transit account would be going down, similar to the trend for the highway account.

Mr. PASCRELL. Why is there such a huge swing from 2008 to 2009? That is a swing of \$4 billion. We are in the plus area in 2008, we wind up in the minus area in 2009. That is a \$4 billion swing. Why is that? How did that happen?

Ms. SCHEINBERG. If you look at 2006 to 2007, there is a \$4 billion decline in the trust fund balance. Then in 2008 there is another \$4 billion decline, and in 2009 there is another \$4 billion. This is a continuous trend. The authorized levels in SAFETEA-LU are such that the Highway Trust Fund cannot keep up. We are authorizing programs at the same time that Trust Fund balances are declining.

Mr. PASCRELL. That brings me to my next question. What needs to be done to the Highway Trust Fund in order for it to keep up, particularly in the area of highway construction?

Ms. SCHEINBERG. We need to find new sources of revenue.

Mr. PASCRELL. Well, we have been talking about this for a long time. And the Administration has been talking about it for a short time and with no suggestions. What would you suggest? What are the options open to us? Let's get down to the real nitty-gritty, besides these numbers.

Ms. SCHEINBERG. Yes, sir. We are looking for realistic ideas. One of the things that the Open Roads program does is look for real ideas that are going on on the ground.

Mr. PASCRELL. Good. Let's talk about real ideas.

Ms. SCHEINBERG. In Mr. DeFazio's district, there are actual things going on. What we are trying to do with our \$100 million

program is encourage States and localities to take the risk of trying out something different, take the risk of doing something—

Mr. PASCRELL. But aren't you really saying, Ms. Scheinberg, that you want whatever shortfall we are looking at and whatever downturn we are looking up to be made up in the States of the Union? Let's look at those States, let's see if those States can refinance in a different way so that they will come up with more money, having, well, many of those States of course have their own trust funds, don't they?

Ms. SCHEINBERG. Yes.

Mr. PASCRELL. And are struggling to deal with them. My State, New Jersey, is a good example. One administration shifts into the next administration, nobody wants to touch it. It is the hot rail here.

So I am asking you to address the hot rail. What is your answer?

Ms. SCHEINBERG. Well, sir, we have three years to come up with the answer. I don't have the answer today. But we have three years and then we have to have the answer. When we have the next reauthorization in 2010, the Highway Trust Fund will not be able to support growth in the program.

Mr. PASCRELL. You anticipated my final question. It will not be there. The money will definitely not be there.

Ms. SCHEINBERG. No, sir.

Mr. PASCRELL. And that is only three years away.

Ms. SCHEINBERG. Exactly.

Mr. PASCRELL. So we have to deal with something pretty soon within the next 18 months, it would seem to me—

Ms. SCHEINBERG. Yes.

Mr. PASCRELL.—in order to be realistic and honest with the American people. If we do not want to raise Federal taxes on gasoline, then we need to look for another way to put money—I mean, let's talk to the American people facts instead of talking about what needs to be done, what can't be done. Because otherwise you're going to be, we are talking around the issue here. We don't have enough money to finish this, what we set out to do.

And I like what you said that the projects are for five years. How do you do that? We have been doing it for the last five years, talking about seven years under the former Administration, ten years of budgeting, five years of budgeting, I mean, it is a joke, you know it is a joke, I know it is a joke. It sounds good. You don't know what the circumstances are ten months from now

But we continue to do that, and the American people seem to wonder, well, where is all this money going to, and what about these trust funds? We have to address this. The Administration has to address it. What is the Administration recommending? Since you came up with the shortfall.

Ms. SCHEINBERG. The Administration is saying that we need to think about this right now—

Mr. PASCRELL. We need to think about it.

Ms. SCHEINBERG. We need to come up with something. We recommended this pilot program. We are also fully endorsing the commission.

Mr. PASCRELL. They need to think about it, Mr. Chairman.

Mr. PETRI. Yes, sir.

Mr. PASCRELL. Okay. We will be thinking about it. Thank you, Ms. Scheinberg. I appreciate your thoughts.

Ms. SCHEINBERG. You are welcome.

Mr. PETRI. Mr. Boozman.

Mr. BOOZMAN. Thank you, Mr. Chairman.

The Open Roads project, I guess I really have, I don't really understand exactly the sense of what exactly we are trying to do. You made the comment that they were trying to get innovative financing. I guess what I am wondering is, how you spend \$100 million doing that. If you go towards project type things, if you actually did something, I mean, \$20 million spread over five States is nothing. That is not enough money to do anything.

Have we already determined the States?

Ms. SCHEINBERG. No, sir, and the—

Mr. BOOZMAN. Have we talked about which States? Have any States come up yet?

Ms. SCHEINBERG. Some States have come in.

Mr. BOOZMAN. Which ones?

Ms. SCHEINBERG. This is not a capital program to build things, but rather a program to implement different ways of expanding the revenues that exist.

Mr. BOOZMAN. I understand. But I guess my thing would be, you know, for a lot of this, the \$100 million, you could have a conference and have all the 50 highway commissioners and their staff come up and talk about it for a week. Again, what I would like to know specifically, I would like to know what States that you are considering. And then specifically, if we are already considering specific consultants, who those are.

I mean, is that what we are going to spend the money on, is consultants?

Mr. CAPKA. Sir, as Ms. Scheinberg had mentioned, what we are trying to do is stimulate some innovation. As Mr. DeFazio had pointed out earlier, in Oregon, they have a program right now where they are trying to do something other than collect the gas tax at the pump. That requires infrastructure to be put in place. And it is not building new capacity, it is not building better interchanges, but it is putting infrastructure in place that will allow a State to explore an innovative idea.

Mr. BOOZMAN. So are we talking, then, about giving them, the State of Oregon, for instance, X million dollars to implement the thing that they thought of, or are we just going over there and saying, can you think of any more things?

Mr. CAPKA. Sir, we are looking for the best value, incremental value, for that next dollar we spend. I think what we want to do is encourage States to come in with proposals on how they would set up an experimental program or a demonstration project and describe what they would hope to achieve in that project. Then we would look at how that project might inform the decision makers later on, on which direction we think we might want to make some further investment.

So we are not going to stymie, we are not going to limit the ideas that come forward. In fact, we would like to see a wide variety of ideas come forward.

Mr. BOOZMAN. I understand that, and I don't want to keep on, I guess, if you, first of all, what States are we talking about, preliminarily?

Mr. CAPKA. Sir, we are not in the process of evaluating State proposals just yet. In fact, we have to put the meat on the bone so we can get that kind of information out to the States to begin the solicitation process of bringing that in. This right now is just a proposal in the President's budget. If we are able to grab onto it, then we will get the specifics out. So we really—

Mr. BOOZMAN. Well, again, with all due respect, and I am a friend. I am very supportive of the agency, and you know that. But I guess, Mr. Chairman, the President, you all talked about earmarks the other night, that we needed some reform and things like that, and this hasn't been authorized, this is not by anybody's definition an earmark. I tell people that come into my office that we don't fund ideas, we fund for-real projects that are thought out, that people can look and see exactly where it is going.

So again at this point, I am not saying that we don't need to do this, but I am saying, Mr. Chairman, that again, I don't think we need to be funding ideas. I think we need to know exactly what we are going to do. The idea is great and it needs to be done. I just don't see how you spend \$100 million in five States doing that without just hiring a bunch of consultants. Like you said, that is just me, at this point.

But I do think that that is a problem for you, because one of your duties is to educate people like me. At this point, like I say, I hadn't gotten that. I hope we can get that, Mr. Chairman. Thank you.

Mr. PETRI. Thank you.

Mr. Sodrel.

Mr. SODREL. Thank you.

It has been my experience in business, you have to analyze the problem correctly before you come up with a solution. Sometimes you can sit down and solve the wrong problem.

I just have a couple of questions of things that you have looked at. It occurs to me, one of the unintended consequences of CAFE, the Corporate Average Fuel Economy standard, was that each of us pays less per mile traveled as the miles per gallon increases on the vehicle. And the high cost of energy for commercial users encourages them as well to consume less fuel per mile traveled. That seems to be exacerbated by the problem of having a fixed cost, fixed price per gallon for the fuel tax while the fuel went up to \$60 a barrel, which affects the cost of concrete, asphalt, road construction, repairs and everything else.

What we have here is, as consumers, we are paying less per mile of travel. Am I correct, or have you even looked at a relationship between gallons consumed and miles traveled? Or do you have that information available to you?

I am trying to understand why we are on this glide path to \$4 billion a year. Do we keep falling off?

Ms. SCHEINBERG. The main reason we are on the glide path we are on is that we are funding more than we are taking in. Your question has to do with why are we not taking in more.

Mr. SODREL. That is correct.

Ms. SCHEINBERG. I think it is a combination of things. Clearly, as gas prices have gone up, the amount of money coming into the Highway Trust Fund is not reflective of the price of gasoline. We are not getting a percentage, as you said.

There are a lot of things going on in the economy at the same time. I am not sure I can give you an exact answer as to why there are not more revenues coming in. But clearly, we are funding a larger program than revenues. That is the reason for the gap.

Mr. BOOZMAN. All things being equal, it seems that—I think this is the problem, is all things are not equal. The cost of road construction is tied to the cost of a barrel of crude. But the tax on the motor fuels is not tied to that same barrel of crude. It is a fixed price per gallon.

Ms. SCHEINBERG. Right.

Mr. BOOZMAN. I just always like to understand the problem before I go to work on a solution. It seems to me that is what is creating a gap here.

Having said that, do you have any way of taking a computer model and saying, if for example the Federal fuel tax were a percent per gallon, as opposed to a cents per gallon, what change would that make for future revenue stream?

Ms. SCHEINBERG. I don't think that we at DOT have done that modeling. But maybe somebody has. Clearly, with the price going up, revenues would have gone up, too, if the gas tax were not a fixed amount per gallon.

Mr. BOOZMAN. For example, you have a State sales tax in most States. And it is a percentage of whatever you are paying for the product. And when the product price goes up, revenues go up with it, as retail sales go up. But what we have here is, the cost is going up but the revenue stream to build and maintain the roads is not going up with it. Or at least not going up on the same flight path.

I have spent a lot of years in transportation. We have run a lot of fuel. I know in our personal case, in 20 years we have moved the same number of miles on half the number of gallons. I mean, as the, not because of CAFE in the case of a private vehicle, but just because of the incentive as the fuel got higher, it made more sense to spend your money on capital expenditures that would lower the cost of the fuel burn.

So I know that we were burning a lot less fuel on the same miles or were, well, in fact it was the other way around, we practically doubled our miles on the same level of fuel. But the effect was, we pay half as much to use the roads as we used to. That was not our goal, but that was the effect.

Well, thank you. I would just like to see some data if I could, just so that I get an understanding of what the problem really is and what solutions might be appropriate. Thank you.

Mr. PETRI. Thank you.

Mr. Reichert?

Mr. REICHERT. Thank you, Mr. Chairman.

First of all, I am from the Seattle neighborhood. We all can share stories of extreme need in the area of transportation and building infrastructure. I thought Seattle was the worst place in the world to drive until I moved to Washington, D.C.

[Laughter.]

Mr. REICHERT. So we could use some help here, too.

But I know you are aware of all the needs across the Country, and the President's budget shows, as you testified, a negative balance at the end of fiscal year 2009. However, if I heard you correct, you said you don't expect that negative balance to really materialize, but you have done the study and it is something you will be looking at.

But have you also taken a look at the other side? And if this negative balance does occur, have you looked at programs that may need to be cut? Have you gone through that?

Ms. SCHEINBERG. We have not done that to date.

Mr. REICHERT. I wouldn't cut any programs in Seattle or Washington, D.C. That would just be my recommendation.

[Laughter.]

Ms. SCHEINBERG. We will certainly talk to you before we do it.

Mr. REICHERT. Okay, thank you. That is a generous offer, isn't it.

The last real quick question I have is, there is a note that the President's budget matches the SAFETEA-LU program research request of \$429.8 million. That transfers an additional \$37.8 million. What does the \$37.8 million from the Federal Highway research, what does that fund? I know it goes to unfunded programs. But what would those be?

Mr. CAPKA. Sir, I can address that for you, and before I do, I would just let you know, my son lives in Seattle. So we get a chance to compare notes as to who has the worst congestion. He is constantly complaining to somebody who he thinks can do something for him in Washington.

[Laughter.]

Mr. CAPKA. We agree with the members of the Committee that we need to have a strong and robust research and technology program. It is very clear that we need to have something in place that will support researching the many problems that we do have. And we discovered as we got into SAFETEA-LU that we had some structural problems that prevented us from executing those programs which SAFETEA-LU and Congress laid out for us to execute.

So we are trying to figure out a way that we can provide some additional resources. What we discovered when we looked at the program, the year 2005, is that we left some contract authority untapped. It was left untapped because we didn't have the obligation limitation to tap the full capacity of that 2005 contract authority.

So what we are proposing in the Budget is to allow us to shift some contract authority into the FY 2007 research and technology program equal to the amount of contract authority that we had remaining in FY 2005, and match that contract authority with obligation limitation.

Now, this is a one year, 2007 fiscal year, solution only. Because we are going to be facing the same problem in 2008 and 2009. And I think as we all know, trying to address this incrementally is a real problem. So we really do need a longer, more comprehensive solution to the research and technology problem.

But the specific answer to your question is that we saw some extra contract authority available in 2005 and we are asking for

some obligation limitation to cover it now so we are able to spend that money on research and technology.

Mr. REICHERT. Thank you. Thank you, Mr. Chairman.

Mr. PETRI. Thank you. I think we will have a second round of questions. I know several members would like to ask some additional questions. We have a hearty band of members here, but not the whole panel, so we are able to do that within the time that is available.

I had a couple of questions, or at least in the area I would like to mention. We passed, as you know, in SAFETEA-LU, language that created two commissions to kind of look at funding options and make recommendations and also infrastructure, how to invest more efficiently in infrastructure, that sort of thing. But we did not fund both commissions at traditional levels, despite increased costs. While the appointments have been made by the various players, no appointments have yet been made by the Administration, as I understand it.

Could you discuss that and whether it makes sense to try to have one commission rather than two commissions that actually work in this area? And can you give us an idea of when the appointments will be made, so we can get to work? Because you pointed out the urgency of helping. There are some very good people who are serving on this commission, and I know they are very conscientious. We look forward to their analysis and recommendations as we prepare to reauthorize another bill a few years down the road.

Ms. SCHEINBERG. Yes, sir. The names from the Administration have been identified, and those people are going through the background security clearance process. They should be announced very soon.

We agree with you that the commission should be up and running as soon as possible to address these important issues. At one point we discussed with you the idea of having one commission versus two, but I think at this point we are on the track to have two commissions.

Mr. PETRI. How long do these security clearances typically take?

Ms. SCHEINBERG. The background checks are underway right now. I don't know exactly how long it will be, but it will be soon.

Mr. PETRI. Thank you.

Mr. DeFazio.

Mr. DEFazio. Thank you, Mr. Chairman.

I think at the outset of your remarks you said that basically the proposed budget was funding the provisions of SAFETEA-LU. But I did notice that Small Starts was reduced by \$100 million. I guess it is a two-part question. One is, does that evidence a lack of commitment or future? Should we have ongoing concerns about the support for the Small Starts program?

Secondly, is it coincidental that that \$100 million equals the Open Roads Financing pilot program, and was the money transferred from transit over to Open Roads Financing, which would seem to be not the most appropriate? I guess just in reflection to my colleague from Arkansas, I would agree, I mean, we don't want to bloat up these test programs.

The proposal in Oregon, which I am not sure I am particularly supportive of, but it is innovative and different, and it is at this

point rather modestly funded at about \$2 million. That is because of the infrastructure required, GPS driven and special equipment at fueling stations and that. I would hope that any grants we are making under this are not for consultants, because we have got a commission. The commission can blue sky things or bring in people to testify about ideas.

I would assume that you are going to restrict the expenditure of funds to real life applications to see whether or not they work, how they work, what the problems might be or not be, whether they could be further expanded.

Ms. SCHEINBERG. Yes, sir. We agree on that.

Mr. DEFAZIO. All right.

Ms. SCHEINBERG. Regarding your question about the Small Starts, this is a new transit program that was authorized in SAFETEA-LU, and we do support the program. The reason for the \$100 million funding in 2007 is because it was not authorized in 2006. 2007 is the first year. SAFETEA-LU requires that we issue regulations to establish the criteria for this program, and for selecting projects and new grant agreements.

We have started this process. An advanced notice of proposed rulemaking came out last month. There is, I believe, an open meeting today in San Francisco to get comments from potential applicants.

The process of establishing the program will go well into 2007. So by the time we could actually open it up to applicants, review those applications, and make grant agreements, it would be late in 2007. We don't believe that we can commit a full year of funding in 2007.

This is without prejudice for future years. The full \$200 million for the program is reflected in our out-year numbers. The first year is a transition.

The second part of your question was whether we used that \$100 million for Open Roads. The answer is no. The \$100 million for the Open Roads program is coming off the top of the highway program. It is a highway program, and we wouldn't take money from transit to fund a highway program.

Mr. DEFAZIO. Okay, then I guess the other, since we are carrying forward a balance in the Trust Fund for transit's a little better off, I guess I would wonder whether or not that Small Starts reduction that you could have recommended an increase, say, in New Starts, for instance, of that same amount.

Ms. SCHEINBERG. Well, we didn't.

Mr. DEFAZIO. Right. Maybe Congress will do that.

Okay. Then just the last one, about paying for the NHTSA budget out of the Highway Trust Fund, including some things that have been traditionally funded out of general revenues. We don't have jurisdiction over a lot of issues in that since they are considered to be commerce related. I am just curious why the Administration is making that request, if it is just because the general revenues are otherwise in not very good shape and they didn't want to borrow more there.

Ms. SCHEINBERG. There is always an issue of how far to go with general revenues which are always limited. But the other part is that over time, NHTSA has come under the Trust Fund. More and

more of MHTSA's funding has come under the Trust Fund. NHTSA has been appropriated funds by Congress out of the Trust Fund in the last several years. The President's budget request for fiscal year 2007 would bring the whole agency into the Trust Fund. It was more of a way to fund the whole agency from the same source rather than continuing the split.

Mr. DEFAZIO. Maybe we can clean up our jurisdiction here and we will take authority over the safety issues, Mr. Chairman.

And on that point, there was one very artfully worded piece to the bill which escaped the notice of the commerce watchdogs, which does potentially tread in their area, which I had inserted. And that is to look at the potential problems with these new high intensity headlights. Consumer Reports and some others have covered that.

And I note that, particularly on two lane rural roads, that they are a problem, and the European cars that have them are self-leveling, American cars are not. You do sometimes, it is like driving at someone with six high beam headlights instead of just two in your face. I think that this is something that we should be looking at on the safety side. There was some language in the bill regarding that which we would be happy to point out in case it has escaped your notice.

Hopefully we are going to take a look at that, and some potential rulemaking. Because without putting in the adjusters, which the American manufacturers aren't, you are hitting people with an extraordinary intensity. Apparently we use a very antiquated way to measure light intensity, which is pre-Edison or just about Edison. That doesn't go to the impact on the eye, and particularly with a lot of people like myself with aging eyes, this is going to become more and more of a problem with night vision.

So I think it potentially, and you know, they are extraordinarily expensive and in my mind, stupid because of the very marginal benefit they provide for the drivers of the car that has them, as opposed to the oncoming car. I think, perhaps the negative benefit outweighs them, particularly if you don't do it with this safety mechanism that the Europeans are using and we are not. So hopefully that will get a good look at.

Thank you, Mr. Chairman.

Mr. PETRI. Mr. Pascrell, anything more?

Mr. PASCRELL. No, thank you, Mr. Chairman.

Then you have the last word.

Mr. DEFAZIO. Oh, thank you, Mr. Chairman.

Mr. PETRI. Oh, Mr. Boozman.

Mr. BOOZMAN. I was going to say, first of all, I am an optometrist, I can visit with you a little bit later, Mr. DeFazio, and look at those aging eyes and see what is causing your night problems.
[Laughter.]

Mr. BOOZMAN. The other thing is that I would just like to comment, to me, we almost have the potential of this being kind of the perfect storm. You have the, I think Congress finally is coming to grips, I think the Nation is coming to grips with the fact that we need to be less energy dependent on the Middle East. And part of that is going to be conservation, part of it is going to be more fuel efficient cars. All of that equation is going to further put pressure on the gas tax.

So that is a real problem. The other problem is that as I visit with my folks at home, my highway commissioners and stuff, they are telling me that in the last year, since they have done their projects and all this, that they have upwards to a 30 percent increase in cost. That is a tremendous figure. But that is the for-real deal. So we have decrease in revenues, we have tremendous increase in costs, and because the economy is humming along, not only in our Nation but worldwide, I think the potential there is to increase, also.

So we need to look at, through studies or however we work it out, to do the gas tax equation. The other thing is, and if you will just comment to me about what we are doing, the other side is, we have got to come up with more efficient ways of building roads. The old, you know, just however you do it, much more efficient way of building roads in a more cost effective way, whatever is out there, spread that word. Then also roads that hold up and last longer.

Mr. CAPKA. Sir, that is an excellent observation. In fact, I would have to thank Mr. Petri and all of you on the Committee for helping us in SAFETEA-LU with at least one program for that purpose. And I will talk about a couple. But we have a Highways for Life program that was put into the authorizing language, which addresses exactly that point. How do we look at the way we deliver the highway infrastructure and how can we deliver it, not just more cost effectively, but quicker and safer because of what construction congestion means now on the roads? That whole program is meant to stimulate that kind of innovative thinking.

We also have on the research and technology side, which is another reason why we are very interested in seeing that program be very healthy, a good program of technology transfer where we are out looking for the good ideas in the research environment, trying to stimulate at the Federal level the advanced kind of research, so the practical research and applied research at the State level can all be working toward that same direction. But you have hit on a great point. It is not just how we pay for what we have, but how we deliver what we need to deliver more efficiently and more effectively.

Mr. BOOZMAN. Thank you very much.

Mr. PETRI. Mr. Baird, any questions?

Mr. BAIRD. Yes, indeed, if I may. I thank the witnesses and thank the Chairman. When this body passed last year the SAFETEA-LU bill, one of the provisions of it was a sense of the Congress language, dealing with the provisions of the Buy America Act. We are familiar with internal memos from DOT that essentially suggest they don't have to honor that. I just want to put the marker down and ask your thoughts on this.

The Buy America Act, when originally passed, I think was intended to do a couple of things: one, identify critical infrastructure industries in this Country, and assure that those industries remained vibrant. I think two, the general principle is if American taxpayer dollars are going to pay for a project, it stands to reason that Americans be employed in the pursuit of constructing those projects.

Increasingly, State departments of transportation and others are finding ways around not only the intent but the letter of the Buy

America Act, and I am greatly concerned about this, and I will tell you why. We have a steel fabricating capacity in this Country that is outstanding presently, but that is subject to significant challenges. If we lose our steel fabrication capacity, and the same applies for certain other industries, and there is a natural disaster, and I live in Washington State, on the West Coast, where we have such things as earthquakes and volcanoes and hopefully never, but possibly a tsunami.

If we lose our steel fabricating capacity domestically, and we are dependent then on foreign sources for fabricated steel, someone will look back to this date, and say, how foolish we were, in the Congress and in the Administration, if we let that happen. So I would appreciate any comments you have about whether it is the intent of the Department of Transportation to ensure that States and other entities honor the letter and intent of the Buy America Act.

And also, if it is the position of the Department of Transportation that it would be prudent to allow fundamental domestic industries like steel fabrication to be lost to foreign competition.

Mr. CAPKA. Sir, I will address that question and your comments. I know that you and the Secretary and Mr. Chip Nottingham had a great discussion earlier this week on that very issue. And it is high on the radar screen.

So we are aware of the concerns. We are also very interested in ensuring that we do comply with the letter of the law. That is important for us to do that. And that is what we are attempting to do in the way we apply the Buy America Act. We understand the sense of Congress and we certainly read that in the language. We are trying to deal with that as best we can, again, looking at the legal aspects of it.

But we are sensitive to it. We have had a number of representatives of the steel bridging community come by and see us on this very issue. We know the issue that is out there. So sir, it is a point that is well taken and a point that is well understood.

Mr. BAIRD. I appreciate that. We did have, indeed, a very good meeting with the Secretary and they intend to get back to us. So I understand, I am not trying to sort of get at cross purposes here. We met with the Secretary just the other day and appreciated meeting with his staff.

I just want to underscore the importance of this. Talk to the steel fabricators as you have, we just had one tell me it is going to close its doors, 150 jobs, top-flight fabricator. At some point, you put yourself vulnerable to foreign suppliers, because you just simply can't, when you lose the physical infrastructure, the plants, the cranes, the blow torches, all the other things that go into one of these, the sophisticated cutting and computer equipment. When you lose this, you don't get it back. That is it, gone, gone. And you lose the work force and you lose the land, because these are very land intensive things. You have to have all this space to store the steel, to construct the bridges locally before you transport them.

I really, sincerely believe we would make ourselves vulnerable from a defense and security perspective, and from an infrastructure security perspective. And by golly, I think we would be making a huge mistake if we don't put a marker down and tell folks like CalTrans and others that, by gosh, the Congress of the United

States has spoken and the Administration is with the Congress of the United States, and if you are going to spend American taxpayer dollars on your project in any way, then you are going to adhere to Buy America, the intent and the letter of the law.

President Bush, in his State of the Union address, said specifically, we want all, this is virtually a quote, we want all of the world to buy American. I would hate to have a little footnote below that that said, except for California and other States that are building federally funded highway transportation projects.

So I would just urge you, for posteriority and for current employment in the current infrastructure health of this great Country, to insist on the fundamental intent and letter of Buy America and put a strong marker down on anybody who intends to dodge that, that if they do, they will lose their Federal highway funding.

Mr. CAPKA. Sir, your point is well understood.

Mr. PETRI. Mr. Sodrel.

Mr. SODREL. Thank you, Mr. Chairman. One other issue I would like to talk about. You just talked about putting NHTSA under the, or taking the funding out of the Highway Trust Fund. These numbers I have looked at are pretty broad numbers.

What do we fund, other than highways and bridges, out of the Highway Trust Fund? Originally the Highway Trust Fund was designed for highways and bridges and was paid for by highway users. What some people may not know here is heavy truck users pay a, they used to call it a Federal highway use tax, now they call it a heavy vehicle use tax. It is an annual tax that is paid for the privilege of using the Nation's highways, and you pay a Federal excise tax when you buy a new truck that is somewhere between \$7,000 and \$9,000 on purchase.

So there is a lot of money that goes into the Fund. And it was originally designed for the benefit of those people that were using the highways. Now we are siphoning off a lot for transit, we siphon it off for rails to trails, we siphon it off for who knows how many other purposes. And I would like to know what percentage of the budget is non-highway and bridges. What percentage of the money that comes out of the Highway Trust Fund is spent on something other than highways and bridges?

And if you don't know, if you could get me the answer, I would appreciate it.

Ms. SCHEINBERG. We will get that to you for the record.

[The information received follows:]

[The information follows:]

The Highway Revenue and Federal-aid Highway Acts of 1956 established the Federal Highway Trust Fund (HTF) as a mechanism for financing an accelerated highway program and for the purpose of funding the construction of an Interstate System and aiding in the finance of primary, secondary and urban routes. Revenues to the HTF were dedicated to the financing of Federal-aid highways. Subsequent legislation, enacted over the past 50 years, has expanded the scope and uses of Highway Trust Fund revenues to finance a wide variety of authorized surface transportation programs, including highway safety and public transportation.

In FY 2007, based on SAFETEA-LU authorizations as modified by the President's Budget, a total of \$50.4 billion is authorized from the HTF for highway, highway safety, and public transportation programs. Of this amount, approximately \$11.1 billion, or 22 percent, is authorized for programs other than highway and bridge construction and maintenance programs.

A number of the programs administered by the Federal Highway Administration have a broad range of eligibilities, some of which would fall within the highway and bridge specification and some outside that specification. The list below shows the full range of Highway Trust Fund programs authorized in SAFETEA-LU for FY 2007.

**Surface Transportation Programs Authorized from the Highway Trust Fund in
SAFETEA-LU (as modified by FY 2007 President's Budget)**

Federal Highway Administration

- Interstate Maintenance Program
- National Highway System
- Bridge Program
- Surface Transportation Program
- Congestion Mitigation and Air Quality Improvement Program
- Highway Safety Improvement Program
- Appalachian Development Highway System
- Recreational Trails Program
- Federal Lands Highways Program
- National Corridor Infrastructure Improvement Program
- Coordinated Border Infrastructure Program
- National Scenic Byways Program
- Construction of Ferry Boats and Ferry Terminal Facilities

Puerto Rico Highway Program
 Projects of National and Regional Significance
 High Priority Projects Program
 Safe Routes to School Program
 Deployment of Magnetic Levitation Transportation Projects
 Highways for LIFE
 Highway Use Tax Evasion Projects
 Administrative Expenses
 Operation Lifesaver
 Equity Bonus Program
 Revenue Aligned Budget Authority
 Transportation, Community, and System Preservation Program
 Indian Reservation Road Bridges
 Truck Parking Facilities
 Freight Intermodal Distribution Pilot Grant Program
 Delta Region Transportation Development Program
 Toll Facilities Workplace Safety Study
 Work Zone Safety Grants
 National Work Zone Safety Clearinghouse
 Road Safety (Data and Public Awareness)
 Bicycle and Pedestrian Safety Grants (Clearinghouse)
 Transportation Infrastructure Finance and Innovation Act Amendments)
 Value Pricing Pilot Program
 America's Byways Resource Center
 National Historic Covered Bridge Preservation
 Nonmotorized Transportation Pilot Program
 Grant Program to Prohibit Racial Profiling
 Pavement Marking Systems Demonstration Projects in Alaska and Tennessee
 National Surface Transportation Policy and Revenue Study Commission
 Road User Fees Field Test - Public Policy Center of University of Iowa
 Transportation Assets and Needs of the Delta Region - Study and Strategic Plan
 Transportation Projects
 Going-to-the-Sun Road, Glacier National Park, Montana
 Great Lakes ITS Implementation
 Transportation Construction and Remediation, Ottawa, OK (Tar Creek)
 Infrastructure Awareness
 Denali Access System Program
 I-95/Contee Road Interchange Study
 Multimodal Facility Improvements

Transportation Research

Surface Transportation Research Program
 Training and Education
 Bureau of Transportation Statistics
 University Transportation Research
 ITS Deployment

Federal Motor Carrier Safety Administration

Motor Carrier Safety Grants
 Administrative Expenses
 Commercial Driver's License Program Improvement Grants
 Border Enforcement Grants
 Performance and Registration Information System Management Grant Program
 Commercial Vehicle Information Systems and Networks Deployment
 Safety Data Improvement Grants
 Commercial Driver's License Information System Modernization

National Highway Traffic Safety Administration

Highway Safety Programs
 Highway Safety Research and Development
 Occupant Protection Incentive Grants
 Safety Belt Performance Grants
 State Traffic Safety Information System Improvements
 Alcohol-Impaired Driving Countermeasures Incentive Grant Program
 National Driver Register
 High Visibility Enforcement
 Motorcyclist Safety
 Child Safety and Child Booster Seat Safety Incentive Grants
 Administrative Expenses

Federal Transit Administration

Formula and Bus Grants

Mr. SODREL. Because that is the other thing that affects how much money we have to build and maintain roads, is how much are we spending for other purposes, purposes other than what the Highway Trust Fund was designed for. And I would appreciate it if you have some information on those previous questions as well.

Ms. SCHEINBERG. Absolutely.

Mr. SODREL. I thank both of you for being here today.

Ms. SCHEINBERG. Thank you.

Mr. SODREL. Thank you, Mr. Chairman.

Mr. PETRI. We have one more. Mr. Baird.

Mr. BAIRD. I thank the Chair.

Another question that was called to my attention by some of my local folks who are working on projects. It is my understanding, and maybe you can explain it to me, that certain numbers were designated to go toward certain projects as part of SAFETEA-LU, and when it comes time for actually the local entities to receive that money, a quite substantial surcharge has been subtracted from the money. I understand it is somewhere from 14 to 16 percent, depending on the project and the locale.

I wonder if you can explain that a little bit. Because I have to explain it back home, when they say, well, Congressman, Congress designated X amount of dollars for a certain project. When that check comes, there is quite a discount has been applied to that, supposedly for overhead at DOT. I am at a loss to fully explain it to my constituents and State transportation folks. If you could help me explain it, that would make my job a little easier back home.

I mean really, where does that money go? Under what authority do you folks take it off the top?

Mr. CAPKA. Sir, I may have to get back to you for the record in a little more detail. But there are certain requirements that are taken off the top. We have lop-offs, which is a term that we use to describe contract authority for allocated programs that is in excess of obligation limitation available, and is required by law to be withdrawn from the original program and distributed to the States. There are rescissions that occur. There are obligation limitations that are placed on the contract authority, which some folks may be concerned about as they do their calculation of what they will receive. So it is a combination.

What I would like to be able to do is to get back to you for the record and kind of lay some of that out more specifically. Perhaps we can be more specific with some of the examples that you have that I can help you with.

Mr. BAIRD. That would be great. I can just share with you the sense of frustration and surprise, unpleasant surprise, on the folks who are to be receiving this. Because they had counted on a certain figure, and now that figure is quite a bit low. And you know how these work, you are putting together State, local, Federal match and occasionally private partners as well. And suddenly you are coming into 10 to 14 percent, and I understand possibly even more. They just say, where is this money going to.

I mean, is this a back door way of funding DOT? Is it that we are not authorizing and appropriating sufficient funds here for the base operations of DOT? Anyway, that is the question I get asked.

Mr. CAPKA. Sir, the percentages are, to us in the appropriation process that we go through. But what we will do is lay something out for you so that you can be clear and articulate with your constituents as well.

Mr. BAIRD. That would be great. My guess is I am not alone in this. My hunch would be that many other members of Congress are hearing from folks, hey, I thought you said \$1 million and now we are coming in at the \$870,000 range or something like that. And it depends on the project.

But that is a healthy chunk. And in some cases I am told it is literally freezing projects, because that difference is the make or break difference, and we don't have, to the extent that States have counted on the portion of the Federal money, perhaps erroneously, but counted on that without the discount factored in, the discount is substantial. So if you could brief us on that, that would be appreciated.

Mr. CAPKA. Sir, I will do that.

[The information received follows:]

[The information follows]:

HIGH PRIORITY PROJECTS

The amount of contract authority listed for each project in section 1702 of SAFETEA-LU is distributed in 5 equal annual increments over the years covered by SAFETEA-LU, fiscal years 2005 through 2009. Thus, for a hypothetical \$1 million dollar project in the list, \$200,000 would be allocated to the State each year of SAFETEA-LU.

The application of the annual limitation on obligations determines how much of the contract authority allocated in a fiscal year is actually available for obligation on the project. For fiscal year 2005, for example, 85.5% of the amount allocated for each program is available for obligation. For the hypothetical \$1 million dollar project, \$200,000 would be allocated for 2005 but only \$171,000 would actually be available for obligation. The remaining contract authority, in this case \$29,000, remains with the project but is not available for obligation.

To avoid misunderstandings about the amount of funding currently available for use, some States inform project sponsors only of the amount of contract authority that is actually available for obligation. Nonetheless, the unavailable contract authority remains tied to the project and cannot be used for any other purpose, including administrative expenses.

HOW OBLIGATION LIMITATION AND “LOP OFF” ARE CALCULATED

The obligation limitation is a budgetary control used typically with contract authority programs like the Federal-aid Highway Program (FAHP). Virtually all of the programs that make up the Federal-aid Highway Program are subject to the obligation limitation. Exceptions are the \$100 million per year Emergency Relief Program and \$639 million of the Equity Bonus Program.

When calculating the distribution of obligation limitation, FHWA first sets aside an amount of obligation limitation for the Highway Use Tax Evasion Program and the Bureau of Transportation Statistics equal to the amount of contract authority provided for those programs for the fiscal year. Obligation limitation is also set aside for FHWA's administrative expenses (not to exceed the Limitation on Administrative Expenses set in the annual appropriations act). Also, obligation limitation is set aside for the carryover balances of contract authority for allocated programs. A calculation is then made of the ratio of the remaining obligation limitation to the remaining contract authority. This ratio was 85.5% for 2005 and 87% for 2006.

Once the ratio has been calculated, obligation limitation is set aside in an amount equal to the calculated ratio times the amount authorized for the program for High Priority Projects, Projects of National and Regional Significance, the National Corridor Infrastructure Improvement Program, Transportation Improvements and the Appalachian Development Highway System Program. This limitation is special “no-year” limitation that is available until used.

Next, obligation limitation is set aside for allocated (non-formula) programs that have not received obligation limitation in the previous steps. These programs include certain discretionary grant programs and the research programs (except the Bureau of Transportation Statistics). These programs also receive obligation limitation equal to the calculated ratio times the contract authority authorized for the program for the fiscal year. For these programs, any contract authority in excess of the obligation limitation available is “lopped off.” This means that the excess contract authority is taken away from the original programs and combined into a single pool of funds. This pool of contract authority is then distributed by formula to the States.

Finally, the remainder of the obligation limitation is distributed to the States for their use with their apportioned contract authority. This part of the distribution is often referred to as “formula limitation.”

TAKEDOWNS ON AUTHORIZED PROGRAMS

“Takedown” is the name FHWA gives to a deduction made from the amount authorized for an apportioned (formula) program before the funds are distributed to the States. Such deductions may only be made as provided in law. The funds deducted are then used for the purpose specified in law. Takedowns may take the form of a deduction of a fixed dollar amount or a percentage of the amount authorized. Both types are used in the highway program. For example, the Interstate Maintenance Program is subject to a \$100 million takedown. Each year, before apportioning Interstate Maintenance Program funds to the States, \$100 million is taken off the top of the amount authorized and the remainder is apportioned to the States. The \$100 million is used to fund the Interstate Maintenance Discretionary Program. [23 U.S.C. 118(c)]

ADMINISTRATIVE EXPENSES

FHWA’s administrative budget constitutes only about 1 percent of its total program level. Under SAFETEA-LU, the FHWA’s administrative expenses are authorized at a fixed amount for each fiscal year. FHWA’s administrative funds are subject to a special Limitation on Administrative Expenses (LAE) within the overall obligation limitation on the Federal-aid Highway Program. The LAE is set in the annual appropriations act. It is the LAE that controls how much of the administrative funding authorized in SAFETEA-LU is actually available for obligation in a given fiscal year.

Mr. PETRI. Well, thank you for coming and answering our questions. We look forward to working with the Department of Transportation as we implement SAFETEA-LU and prepare for future decisions. Thank you.

[Whereupon, at 3:27 p.m., the hearing was adjourned.]

Congressman Russ Carnahan (D-MO)
House Transportation Committee
Subcommittee on Highways, Transit, and Pipelines
Hearing on Status of the Highway Trust Fund: How the FY 2007 Budget Proposal
Impacts SAFETEA-LU
Opening Statement
February 15, 2006

- Thank you, Mr. Chairman, for scheduling this hearing on the status of the Highway Trust Fund and how the President's recent budget proposal will affect the programs authorized in SAFETEA-LU.
- Last year, Congress passed a new transportation bill that will allow states across this country, including my home state of Missouri, to move forward with projects to create better, safer transportation systems.
- SAFETEA-LU's investment in transportation will create jobs, increase business productivity, make the roads safer for our families, and keep this country moving.
- Because of this, I am deeply concerned that the President's recent budget contains drastic changes in revenue estimates for the Highway Account of the Highway Trust Fund. I am especially interested to hear today the Department of Transportation's testimony as to how the Department will deal with the projected negative balance.
- I join my colleagues on this Committee in urging the administration to preserve the integrity and the intent of SAFETEA-LU.

**STATEMENT OF
PHYLLIS F. SCHEINBERG
ASSISTANT SECRETARY FOR BUDGET AND PROGRAMS AND
CHIEF FINANCIAL OFFICER
U.S. DEPARTMENT OF TRANSPORTATION**

BEFORE THE

**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS, TRANSIT & PIPELINES
U. S. HOUSE OF REPRESENTATIVES**

FEBRUARY 15, 2006

Good afternoon. Thank you for the opportunity to appear before you today to discuss the President's fiscal year (FY) 2007 budget plan for the Department of Transportation's surface transportation programs.

Last summer, the "Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) authorized funding for the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), and the Federal Motor Carrier Safety Administration (FMCSA) through FY 2009 – providing a record investment in our highways, transit, and highway safety programs.

I am pleased to report to you today that the President's FY 2007 budget plan proposes surface transportation funding as envisioned in SAFETEA-LU. The President's request for highways, transit, and highway safety is \$50.0 billion – \$3.9 billion more than enacted in FY 2006. The President's request includes \$842 million associated with a revenue aligned budget authority (RABA) adjustment. This RABA calculation, as provided for in SAFETEA-LU, adjusts highway funding up or down depending on gas tax receipts and ensures that revenues collected in the Highway Trust Fund are directed to fund some surface transportation program needs. The President's 2007 request, including the RABA adjustment, will provide historically high levels of investment in our highway, transit, and highway safety programs.

The Administration's 2007 proposed funding levels for these transportation programs are especially significant given the overall context of the President's budget. At a time when most non-security related domestic programs are experiencing reductions in their funding levels, and when the Department of Transportation's total budget is holding steady, the President's 2007 budget request would increase highway, transit, and highway safety funding by nearly 10 percent above FY 2006 levels. This shows the high priority the Administration has placed on continuing to fully fund SAFETEA-LU programs among many competing national priorities.

At the same time, the President's 2007 budget projections reflect a continuing downward trend in the cash balances in the Highway Trust Fund that are available for America's highway, transit, and highway safety programs. I call your attention to the fact sheet attached to this statement which will be helpful in reviewing the current status of the Highway Trust Fund. The trust fund has two parts – a Highway account that funds FHWA, NHTSA, and FMCSA programs – and, a separate Mass Transit account that funds FTA programs. Combined, the cash balances for these accounts are estimated at \$14.4 billion by the end of 2007 and fall to \$10.4 billion in 2008. By the end of the authorization period in 2009, trust fund balances are estimated to be a total of \$4.6 billion including a negative \$2.3 billion balance in the Highway account, and a balance of \$6.9 billion in the Mass Transit account.

While we recognize that the trend of an imbalance between resources and spending is a concern, a review of the history of the Highway Trust Fund shows that projections of the cash balances in this fund typically vary from year to year and become less reliable as you look further into the future. The Department of the Treasury model used to calculate the Highway Trust Fund's resources is dependent on macroeconomic projections that are subject to a large number of variables. In addition, expenditures from the Highway Trust Fund are estimates and based largely on approximations of each State's obligations for highway projects and programs. Thus, the factors affecting the cash balances can be difficult to predict. Nonetheless, we recognize that the trend in declining cash balances in the Highway Trust Fund remains constant and needs attention.

The traditional funding sources for highway programs are producing insufficient revenue at all levels of government. One way to identify new ways of expanding highway investment levels is through the new \$100 million Open Roads Financing Pilot Program proposed in the President's FY 2007 Budget. This new program will make it possible for up to five states to explore innovative mechanisms that can augment existing sources of state highway funding, as well as improve highway performance and reduce congestion. The pilot States will report their progress and provide lessons learned that will be helpful as we explore new ways to support surface transportation in the future.

We are hopeful that this program will also assist us in identifying new ways to address the growing problems caused by highway traffic congestion. As demands on our transportation systems continue to grow, congestion and its economic and environmental impacts are a continuing concern.

The Open Roads Financing Pilot Program is just one of the efforts that will assist us in finding new ways to address future surface transportation funding needs. Congress included in SAFETEA-LU the establishment of two commissions charged with reviewing and making recommendations on issues affecting the Highway Trust Fund. The National Surface Transportation Policy and Revenue Study Commission will review current methods and explore alternatives for investing in and managing our surface transportation systems. A separate National Surface Transportation Infrastructure Financing Commission is charged with a specific focus on financial issues and the future of the Highway Trust Fund. This commission will consider alternative approaches for generating revenue in the Highway Trust Fund. These two commissions will provide information on potential alternatives to the current gasoline tax approach that may prove more effective in supporting highway and transit funding.

My testimony today noted that the President's FY 2007 budget is consistent with SAFETEA-LU funding levels. There are two programmatic changes that I would like to highlight for you today. First, the President's 2007 budget changes the funding structure for NHTSA. Currently, a portion of NHTSA's funding is authorized through General Fund resources. The President's budget reflects the impact of authorizing legislation that would fund all of NHTSA's

resources from the Highway Trust Fund, providing consistent budgetary treatment of all NHTSA programs.

Second, SAFETEA-LU authorized the FTA to develop regulations to implement a new \$200 million "Small Starts" transit capital investment program in FY 2007 including the evaluation criteria for selecting projects and new funding grant agreements. Small Starts will provide Federal funding to support projects that are under \$250 million in total cost with a New Starts funding share of less than \$75 million. It is a program that the Administration recommended to Congress because it levels the playing field for medium and small communities. Work is currently underway to complete the regulations needed to establish criteria for awarding these new grants. Last month FTA published an Advance Notice of Proposed Rulemaking in the Federal Register to solicit public comments on the evaluation criteria and other program requirements. Because this new program will not be up and running until late FY 2007, it will be difficult to award more than \$100 million in Small Start grants before the end of FY 2007. As a result, the President's budget funds the Small Starts grant program at \$100 million in FY 2007.

In summation, the President's budget for 2007 proposes surface transportation funding generally consistent with SAFETEA-LU guaranteed levels. Nevertheless, the Administration's revenue and spending projections for future years indicate a shortfall, perhaps as early as 2009, between resources (revenues and balances). We want to work closely with the Congress to find solutions for this projected imbalance. We must begin serious consideration of the post SAFETEA-LU era to ensure that these programs are fully financed to meet our Nation's transportation needs.

Thank you for the opportunity to appear before you today. I would be happy to answer questions.

Surface Transportation Programs
FY 2007 Fact Sheet

SAFETEA-LU ENACTED LEVEL (AUGUST 2005)
(\\$ in billions)

	<u>2005</u>	<u>2006</u>	<u>2007</u>	
Federal-Aid Highways	34.3	36.0	38.2	<i>In our comparisons, we are using 2006 SAFETEA-LU numbers compared with 2007 President's budget numbers (including RABA)</i>
Exempt Highway	0.7	0.7	0.7	
Public Transportation	7.6	8.6	9.0	
Safety	<u>0.9</u>	<u>1.2</u>	<u>1.2</u>	
Total	<u>43.5</u>	<u>46.5</u>	<u>49.1</u>	

FY 2007 BUDGET (INCLUDES RABA)
(\\$ in billions)

	<u>2005</u>	<u>2006</u>	<u>2007</u>
Federal-Aid Highways	33.3	35.6	39.1
Exempt Highway	0.7	0.7	0.7
Public Transportation	8.6	8.5	8.9
Safety	<u>0.9</u>	<u>1.3</u>	<u>1.3</u>
Total	<u>43.5</u>	<u>46.1</u>	<u>50.0</u>

- The FY 2007 budget request supports the **enacted SAFETEA-LU** funding levels of \$286 billion over the six years of the program. The budget also provides an additional **\$842 million in Revenue Aligned Budget Authority (RABA)** in FY 2007. RABA funds are distributed to FHWA (\$838.7 million) and FMCSA (\$3.5 million) as required by current law.
- The FY 2007 budget proposes to fully fund NHTSA out of the Highway Trust Fund. Because of the 1% across the board rescission in FY 2006 and reductions in Transit, the Administration was able to make this proposal within the enacted SAFETEA-LU funding levels.
- The budget includes a **\$100 million** proposal for the **Open Roads Financing Pilot Program**. With these funds, the Administration will work with **up to five states** to explore **innovative mechanisms** that can **augment existing sources of highway funding**, as well as improve highway performance and reduce congestion. The pilot States will be required to report on progress and findings.

Highway Trust Fund Cash Balances During SAFETEA-LU
(\\$ in billions)

	<u>Actual</u>		<u>Estimated Balances</u>			
	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Cash Balance						
Highway Account	10.8	10.6	10.2	6.6	2.4	(2.3)
Mass Transit Account	<u>3.8</u>	<u>1.9</u>	<u>5.9</u>	<u>7.8</u>	<u>8.0</u>	<u>6.9</u>
Total	14.6	12.5	16.1	14.4	10.4	4.6
Byrd Test Passage	2.7	71.1	71.2	65.7	60.3	63.8
(Highway Account)	(pass)	(pass)	(pass)	(pass)	(pass)	(pass)

- It should be noted that this analysis is based on estimated receipts and spending that could later change. Going forward, the Administration will closely watch the status of the Highway Trust Fund.
- Under the FY 2007 budget, the Highway Account and the Mass Transit Account pass the Byrd Test in all years.